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10/032,383	12/21/2001	Tom K. Wentzel	KCC 4843 (KC# 15,400)	5427
7590	09/13/2006		EXAMINER	
Senniger, Powers, Leavitt & Roedel 16th Floor One Metropolitan Square St. Louis, MO 63102			KIDWELL, MICHELE M	
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/032,383
Filing Date: December 21, 2001
Appellant(s): WENTZEL ET AL.

MAILED
SEP 13 2006
GROUP 3700

Richard Bridge
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed May 1, 2006 appealing from the Office action mailed September 8, 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,386,595

KEUN et al.

2-1995

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 3 – 5, 11 – 14, 16, 20, 26, 28 – 29, 31, 33, 52 – 55 and 62 are rejected under 35 U.S.C. 102(b) as being anticipated by Kuen et al. (US 5,386,595).

As to claims 3 and 33, Kuen et al. (hereinafter “Kuen”) discloses the absorbent article as a diaper in col. 1, lines 15 – 21.

Regarding claims 4 and 5, Kuen discloses the fastener as a generally rectangular shape as set forth in figure 7.

With reference to claims 11 and 12, Kuen discloses the invention as claimed.

The examiner contends that the article of Kuen is identical to that claimed. If not, a user

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would not be able to remove the fastener from the garment without also removing the fastener itself. The surface area of the back of the fastener (anchor end) is different from the surface area on the front on the fastener (user end) in that that the user end of the fastener has a plurality of hooks joined thereto.

As to claims 13 and 28, see col. 10, lines 34 – 41.

With reference to claim 14, the examiner contends that any portion the surface area of the anchor end that is three times larger than that of a surface area on the user end may be interpreted to meet the claimed limitation.

With respect to claims 16, 29 and 31, Kuen discloses an absorbent article wherein the fastener has the claimed length and width as set forth in col. 8, lines 32 – 41.

Regarding claim 20, Kuen discloses an absorbent article further comprising an outer cover with active landing material as set forth in figure 7.

As to claim 26, Kuen discloses the fastener comprising an anchor end and a user end as set forth in figure 7.

With reference to claim 52, Kuen discloses a disposable absorbent article comprising a first waist region, a second waist region, a crotch region extending longitudinally between the first and second waist regions, the absorbent article being foldable generally within the crotch region to configure said article with first waist region in generally opposed relationship with second waist region (figure 7) and at least one fastener comprising a single piece of flexible material having an active fastening surface extending continuously thereon (76A), at least a portion of the active fastening surface

being located on the fastener for anchoring to said article on landing material located generally at said first waist region (72A) and at least one other portion of the active fastening material being located on the fastener for fastening to the article on landing material located generally at the second waist region (74A) to secure the article on a wearer, the active fastening surface being covered substantially in entirety by an active fastening material different than the landing material, the active fastening material comprising one of a plurality of hooks and a plurality of loops, the landing material comprising the other of a plurality of hooks and a plurality of loops as set forth in col. 13, lines 38 – 44 and in figure 7.

As to claim 53, Kuen discloses an absorbent article wherein the article has an inner surface and an outer surface with the fastener being adapted for anchoring to the outer surface of the article generally at the first waist region and for fastening to the outer surface at the second waist region to secure the article on the wearer as set forth in figure 7.

Regarding claim 54, Kuen discloses an article further comprising a liner defining the inner surface of the article, an outer cover in opposed relationship with the liner and defining the outer surface of the article, and an absorbent core between the liner and the outer cover as set forth in col. 4, lines 22 – 28.

With reference to claim 55, Kuen discloses a disposable absorbent article comprising a first waist region, a second waist region, a crotch region extending longitudinally between the first and second waist regions, the absorbent article being foldable generally within the crotch region to configure said article with first waist region

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in generally opposed relationship with second waist region (figure 7), an outer cover (figure 7), and at least one fastener comprising a single piece of flexible material having an anchor end, a user end opposite the anchor end (figure 7) and an active fastening surface extending continuously thereon, at least a portion of the fastening surface being located on the fastener for anchoring to said article generally at said first waist region and at least one other portion of the active fastening material being located on the fastener for fastening to said article generally at said second waist region to secure said article on a wearer, the active fastening surface being substantially covered by an active fastening material, the portion at the anchor end configured to have a first shear strength and the portion at the user end configured to have a second shear strength, the first shear strength being greater than the second shear strength as set forth in figure 7. The examiner contends that the article of Kuen is identical to that claimed. If not, a user would not be able to remove the fastener from the garment without also removing the fastener itself. The surface area of the back of the fastener (anchor end) is different from the surface area on the front on the fastener (user end) in that that the user end of the fastener has a plurality of hooks joined thereto.

With reference to claim 62, Kuen discloses a disposable absorbent article having a longitudinal direction and a lateral direction, said article comprising a first waist region, a second waist region, a crotch region extending longitudinally between the first and second waist regions, the absorbent article being foldable generally within the crotch region to configure the article with the first waist region in generally opposed relationship with the second waist region (figure 7 and at least one fastener comprising

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a single piece of flexible material having an active fastening surface extending continuously thereon, at least a portion of the active fastening surface being located on the fastener for fastening to the article on landing material located generally at the first waist region and at least one other portion of the active fastening material being located on the fastener for fastening to the article on landing material located generally at the second waist region to secure the article of a wearer (figure 7), the active fastening surface comprising an active fastening material different than said landing material, the active fastening material comprising one of a plurality of hooks and a plurality of loops, the landing material comprising the other of a plurality of hooks and a plurality of loops, said fastening material being releasably engageable with the landing material of the article as set forth in col. 13, lines 38 – 44 and in figure 7.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7 – 9, 15, 30 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuen et al. (US 5,386,595).

The difference between Kuen and claim 7 is the provision that the active fastening material comprises a plurality of hooks.

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Kuen discloses a fastener wherein the active fastening material comprises a plurality of loops.

It would have been obvious to one of ordinary skill in the art to provide the active fastening material of Kuen with hooks instead of loops since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art.

With respect to claims 8 – 9, it would have been obvious to one of ordinary skill in the art to modify the configuration and density of the plurality of hooks in order to determine the most effective product since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable range involves only a level of ordinary skill in the art.

The difference between Kuen and claim 15 is the provision that a second shear strength at the user end of the fastener is greater than 2,000 grams tensile.

Kuen discloses a fastener with the claimed shear force as set forth in col. 10, lines 34 – 41.

It would have been obvious to one of ordinary skill in the art to modify the first and second shear strength of Kuen in order to determine the most effective product since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering to optimum or workable ranges involves only routine skill in the art.

With respect to claim 30, see the rejection of claim 15.

With respect to claim 35, see the rejection of claim 7.

(10) Response to Argument

Initially, with respect to claim 55, the examiner notes that the applicant's arguments are not commensurate with the scope of the claim language. The applicant states that Kuen et al. fail to disclose or otherwise even suggest a disposable absorbent article that has a single piece fastener. However, the claim language does not require a single piece fastener. Claim 55 recites, among other things, at least one fastener comprising a single piece of material. See lines 10 – 11 of the claim. Therefore, while the examiner maintains that Kuen et al. provide a single piece fastener, it is noted that a single piece fastener is not recited in claim 55.

Next, the applicant provides arguments with respect to the article having first and second shear strengths. The examiner again notes that the applicant states that Kuen et al. fail to disclose the continuously extending active fastening surface at the anchor end having a first shear strength that is greater than the second shear strength at the user end of the continuously extending active fastening surface. The claim recites that only at least portions of the active fastening surface exhibit the claimed shear strengths. Likewise, as stated by the applicant, the claim only requires the surface to be configured to provide claimed shear strengths.

Nevertheless, the examiner contends that Kuen et al. provide an article configured to provide the shear strengths as claimed. The instant specification states that various numbers, sizes, shapes, compositions, densities, or a combination thereof of hooks may be utilized in a particular fastener to provide the desired comfort and shear strengths between the anchor end of the fastener and the user end of the

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fastener. See page 19, last paragraph to page 20, first paragraph. Likewise, page 25, third paragraph states that the shear strength of the fasteners may be increased by proportionally increasing the material size of the fasteners on the anchor end and/or on the user end which in turn would proportionately increase the surface area of the active fastening material on the inside surface of the fasteners and that a greater surface area of the active fastening material will increase the gripping capability of the fasteners to the first waist region of the outer cover and/or to the second waist region of the outer cover.

As noted in the rejection of claim 55, the examiner contends that the surface area of the back of the fastener (anchor end) is different from the surface area on the front on the fastener (user end) in that that the user end of the fastener has a plurality of hooks joined thereto. Kuen et al. also disclose that the size and shape of the hook patches may vary in size and shape as set forth in col. 13, lines 55 – 61. Furthermore, the examiner relies on the claim language that the article is configured to have the claimed shear strengths. Moreover, the claim recites that portions of the fastener provide the claimed shear strength and one can consider a smaller portion of the fastener as the second shear strength and a larger portion of the fastener as the first shear strength, thereby meeting the claimed limitations.

The same rationale holds true with respect to claim 11.

With respect to claim 7, the applicant argues that there is no suggestion in Kuen et al. for covering the entire active surface of the strap with hooks in the same manner as the loops disclosed in the embodiment of figure 7. The examiner contends that the

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claim does not require this limitation. The claim recites that the active fastening surface extends continuously on the single piece of flexible material. The applicant's arguments seem to suggest that extending continuously necessarily equates to encompassing the entire fastener. However, even if the material of Kuen only extended the width of the article as it does in figure 1, this may be considered as extending continuously.

The same rationale holds true with respect to claim 35. The hook and loop components of the fastener are considered as the essential working parts of the fastener, and the mere reversal of these essential working parts involves only routine skill in the art.

(11) Related Proceeding(s) Appendix

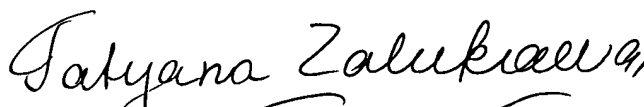
No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


Michele Kidwell

Conferees:

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